THE HON'BLE SRI JUSTICE T.CH.SURYA RAO

AND

THE HON'BLE SRI JUSTICE G.CHANDRAIAH

Writ Petition No.19076 of 1997

(per the Hon'ble Sri Justice T.Ch.Surya Rao)

Dated 20th June, 2006

Between:

Bansilal, S/o Late Kalyan Singh,
aged about 65 years, Occ:Agriculturist,
resident of 9-4-187/1, Banjari Darwaza,
Golkonda Fort, Alijapur, Hyderabad .. Petitioner

and

The State of A.P., rep. by the
Mandal Revenue Officer,
Golkonda Mandal, Viayanagar Colony,
Hyderabad and another .. Respondents

THE HON'BLE SRI JUSTICE T.CH.SURYA RAO

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THE HON'BLE SRI JUSTICE G.CHANDRAIAH

Writ Petition No.19076 of 1997

ORDER: (per the Hon'ble Sri Justice T.Ch.Surya Rao)

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The petitioner seeks a writ or direction, more particularly in the nature of writ of Certiorari, assailing the order, dated 10-07-1997, passed by the learned Special Court under the A.P. Land Grabbing (Prohibition) Act in L.G.C. No.88 of 1996.

The application in L.G.C. No.88 of 1996 was filed by the State through M.R.O., Golconda Mandal, against the Writ Petitioner, who is the respondent therein. It was alleged *inter alia* in the application that the land to an extent of 286 sq. mtrs., covered by T.S.No.1/P, ward No.13, block 'K' of Shaikpet village, within the limits of the Municipal Corporation of Hyderabad, more fully detailed in the schedule given in the said application, was classified as a Government land and the respondent encroached on the said land and got a house constructed thereon. After noticing the encroachment, Notice under Section 7 of the A.P. Land Encroachment Act, 1905, was issued to him on 01-03-1995. In response thereto, the respondent filed his explanation. After having considered the explanation and the documents filed along with the explanation, the authorities under the

Act were of the view that the respondent was an encroacher and therefore a summary eviction order was passed under Section 6 of the Land Encroachment Act, which was served upon respondent on 10-01-1996. Since that was not followed up by the execution, the State subsequently filed the application before the Special Court.

The case of the respondent was that the land in question was not at all a Government land and that the land in question was the land acquired by one, Kalyan Singh by purchasing the same from one Dilwar Ali Khan by means of a sale deed dated 20th Behman 1348 Fasli. The said Kalyan Singh was the father of the respondent and thus they have been in possession and enjoyment of the same and that they have perfected the title by means of adverse possession. At the time of enquiry, Deputy Tahasildar was examined on the side of the applicant and got Exs.A1 to A6 marked. Respondent examined himself as R.W.1 and got Exs.B1 to B14 marked. Under the impugned judgment, the learned Special Court allowed the application. The writ petitioner is now assailing the said order.

Ex.A2 is the extract of T.S.L.R. EX.A1 is the sketch. These two documents show that the land in question is a Government land. At any rate, there has been no gainsaying of the same. It appears, in respect of a part of the land covered by T.S.No.1/P, Ward No.13, Block 'K', L.G.C.No.19 of 1996 was filed against a different person. That L.G.C.No.19 of 1996 ultimately ended in passing an order of eviction in favour of the Government. Land now in question is part of T.S.No.1/P, Ward No.13, Block 'K'. The total extent of the land covered by T.S.L.R. is 4211 sq. mtrs., of which the present land in dispute is a part measuring 286 sq. yds. The question of title in detail appears to have been gone into in L.G.C. No.19 of 1996. When the enquiry in the instant case was completed, the counsel for the writ petitioner appears to have represented before the Special Court that

the judgment in L.G.C.No.19 of 1996 covered the land in dispute also. Going by the representation and having found that the land in dispute in the instant case was part of T.S.No.1/P, eventually the Special Court directed the eviction of the respondent. In the process, the Special Court also observed that the document filed on the side of the respondent did not inspire confidence. It is obvious that Exs.A1 and A2 were not assailed by the respondent. As discussed hereinabove, they disclose that the land in question is the Government land. Further more, Section 7 notice under the provisions of Land Encroachment Act was served upon the respondent, followed up by this summary order. They show that the respondent was an encroacher. As against this case, the plea of the respondent shall have to be examined. He sets up title in the property on the ground that his father purchased the said piece of land from one, Dilwar Ali Khan, marked in this case as Ex.B1. The said document was eschewed from the consideration on the ground that it did not inspire confidence. Even otherwise, the document has not been proved, more particularly when it is the case of the applicant that that document does not cover the land in dispute. Although a tall claim was made by the respondent that his father purchased the said property under Ex.B1 in 1348 fasli and since then they have been in possession and enjoyment of the same, no document worth the name to show their possession up to 1976 has been filed in this case. For the first time, the possession of the land is sought to be proved by filing Ex.B7, bill for electricity charges, and B9, water cess receipt. Therefore, the respondent failed to prove the possession over the land as claimed by him. The possession of the respondent, on the other hand, from the record is obviously from 1976 onwards. Although the plea of adverse possession has been taken *inter alia* in the counter, the respondent does not appear to have pursued that plea by filing any evidence. Even now, he has not raised that plea before this Court regardless of the fact that such a plea can

be adverted to by this Court, as a matter of that the Special Court, in view of the judgment of the Apex Court in *N.Srinivasa Rao V. Spl. Court under A.P. Land Grabbing (Prohibition) Act*[1]. The respondent failed utterly to prove such a plea. The fact remains that the land under acquisition was held to be the Government land.

Having regard to the fact that it is a Government land and that the respondent failed to trace his possession through his father and his father's vendor by name Dilwar Ali Khan, he cannot now seek to contend before this Court that his possession over the land in dispute is by means of a bona fide purchase from the original owner and there was no illegal or unlawful intention on his part to grab the land of the Government. Such a plea appears to be a belated one. When the land in question is obviously a government land and the respondent is found to be in occupation from 1976 onwards, even accepting his case but without any lawful entitlement thereto, it is obvious that such a possession must be with the necessary intention to grab the land. For the above reasons, we see no ground to interfere with the impugned order passed by the learned Special Court.

The learned counsel for the writ petitioner represents that having regard to the fact that a pucca house was constructed over the land in dispute, it is appropriate to direct the Government to consider the request of the writ petitioner for regularization. It is open to the writ petitioner to approach the Government for such regularization. In the instant writ petition, we refrain ourselves from making any such observation.

For the above reasons, the Writ Petition is dismissed. But, under the circumstances, no order as to costs.

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T.CH.SURYA RAO, J.

G.CHANDRAIAH, J.

20th June, 2006.

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[1] 2006 (3) Supreme 145